IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4128 OF 2004

Dr.Rajeev Sharma. ...Petitioner.
Vs.
The Principal, Shankar Narayan
College, Bhayandar (East) & Ors. ...Respondents.
....

Mr. R. S. Upadhaya for the Petitioner.
Mr. A.M. Kulkarni for Respondent No.1 and 2.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

January 10, 2006.

ORAL ORDER (PER DR.D. Y. CHANDRACHUD, J.) :

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing.

The Petitioner was appointed as a lecturer in Hindi in the College managed and conducted by the Second Respondent on 24th June 1999 on a temporary basis till the end of Academic Year 1999-2000. On 14th June 2000, another order of appointment was

issued to the Petitioner by which his services were engaged again on a temporary basis till the end of the Academic Year. The Petitioner holds a B.Sc. Degree qualification, an M.A. in Hindi and was awarded a Ph.D. in 1994. Hence, it has been submitted that the Petitioner is duly qualified and is exempted from the requirement of passing the eligibility test prescribed by the UGC. On 30th July 2001, a fresh letter of appointment was issued to the Petitioner on a temporary basis till the end of the second term of the Academic Year 2001-02. On 30th April 2002, the services of the Petitioner came to be terminated.

Aggrieved by the order of termination, the Petitioner moved the University and College Tribunal at Mumbai on 7th August 2002. There was a delay of 111 days in filing the appeal and an application for condonation of delay was moved. The Tribunal dismissed the application on 1st April 2003 principally on the ground that the Petitioner had not established that he had a prima facie case on merits to challenge the order of termination. A Writ Petition under Articles 226 and 227 of the Constitution was filed by the Petitioner before this Court and it came to be allowed by an order dated 16th April 2003. The Learned Single Judge was

of the view that the Tribunal was in error in rejecting the application for condonation of delay on the ground that the Petitioner had failed to establish prima facie any substance in his case on merits. The proceedings were remitted back to the Tribunal for determination of the application for condonation of delay. Upon remand, the Tribunal has once again, by its order dated 13th February 2004 declined to condone the delay.

In support of the application for condonation of delay, the Petitioner had made the following averments :

> "The Appellant states that he was in service at the Respondent College since the academic year 1999-2000. The Appellant was issued termination order dated 18th March 2002. However, he was intimated by the Principal that the letter was only a formality and that he should report for duty during the academic year 2002-2003 from 13th June 2002 when the college would re-open. The Appellant did so and in fact performed his duties on 13th, 14th and 15th June 2002. Thereafter he was told that the college would take interview again and that he should attend the interview when called for. The

> appellant was not signing the muster roll for teachers initially because it was not ready for any teacher but the teachers were told that their signatures would be recorded from the first date, that is, 13th June 2002. The Appellant reported for interview on 29th June 2002 though it was not necessary and there was no duly constituted Selection Committee. The Appellant was called to come on 1st July and he did so and attended to his duties by engaging a lecture when the Principal was not available. However, later on the Principal called the Appellant and told him not engage lectures till the Joint Director of Higher Education was approached for No Objection Certificate. The Appellant was asked to enquire about the same and he did so by visiting the college from time to time. On 11th July the Appellant was informed by Respondent No.1 that since there was not enough students, the Appellant would not be taken in service."

Besides this, it may also be noted that in paragraph 6 of the Memo of Appeal, it has been averred that at the end of Academic Years

1999-2000 and 2000-2001, the Petitioner had been issued similar orders of termination respectively dated 13th February 2000 and 19th March 2000 after which his services were engaged once again for the subsequent Academic Years. On 18th March 2002, the Petitioner was intimated that his services would stand terminated from 30th April 2002. Hence, the case of the Petitioner is that as in the previous Academic Years, he expected that his services would be engaged again and that an assurance was in fact, given to him to that effect by the authorities.

A perusal of the reply filed by the management to the application for condonation of delay would demonstrate that there was a denial of the averment that the Petitioner had rendered duties even after receipt of the order of termination. The management noted that even according to the application for condonation of delay, the Petitioner had not signed the muster roll after the date of termination. From the reply of the management, it is evident that several averments in the first paragraph of the application for condonation of delay have not been specifically controverted. In paragraph 5 of the reply, the only response to the case of the Petitioner is as follows :

> "I deny if the entire case of the Appellant to the effect that even after receipt of termination order, the Applicant joined his duties and has performed certain acts, deeds and things as claimed in the Memo of Appeal. I categorically state that after receipt of the termination order the Appellant has never bothered to perform any act, deed or thing as an employee of the Respondent Institution, obviously because he was not required to do so. I stoutly deny the case tried to be made out in the delay condonation application by the Appellant as to engaging in lectures, reporting for duty etc. The Appellant however, has ventured to specifically admit in categorical terms in delay condonation itself that he has not signed the muster roll, the excuses put forth by the Appellant in this regard is false to the knowledge of the Appellant."

Apart from this, it has been averred on behalf of the management that after the termination of the services of the Petitioner, another teacher has been appointed to fill up the post upon the vacancy that has been created. This again is a matter which would go to

the merits of the appeal and can be urged by the management, should the appeal is taken up for hearing on merits.

The Tribunal declined to condone the delay in the present case holding that the Petitioner had not led any other evidence apart from his own affidavit to establish that he had worked in the College till 20th July 2002 after his services were terminated on 18th March 2002. The Tribunal was of the view that the Petitioner ought to have filed an affidavit of a member of the staff or of a student of the Institution in view of the denial by the management of the averment that the Petitioner had worked after the date of termination. The Tribunal has held that admittedly, the Petitioner had not signed the muster roll after the date of termination.

In our view, the approach of the Tribunal to the application filed by the Petitioner for condonation of delay is rather technical. The case of the Petitioner, it must be noted, is that during the course of the previous Academic Years, the management had issued similar letters of termination to him after which his services came to be engaged for the ensuing Academic

Year. We have already adverted to the circumstance that save and except for denying the averment that the Petitioner had worked in the College after the date of termination, the other averments in support of the application for condonation of delay including those in regard to the representations held out to the Petitioner have not been specifically denied. There are only bald and general denials in the reply filed by the management to the application for condonation. Having regard to the realities of the matter, it would be unrealistic to except that a teacher whose services have been terminated would necessarily be in a position to obtain affidavits of the staff or of students in litigation pending before the Tribunal. At any rate, an application for condonation of delay should not be rejected on the ground that such affidavits have not been filed where sufficient averments are found in the application for condonation. The Petitioner filed his own affidavit in support of the application for condonation of delay and in our view, sufficient grounds have been made out for condonation.

In the circumstances, the Petitioner is entitled to succeed. The order of the Tribunal dated 13th February 2004 is accordingly quashed and set aside. The application filed by the

Petitioner for condonation of delay shall accordingly stand allowed. The Tribunal shall accordingly now proceed to hear and dispose of the appeal filed by the Petitioner to challenge the order of termination on merits after hearing the parties.

The petition is allowed in the aforesaid terms. In the circumstances of the case, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)